IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.Appeal 208 of 2000

Reserved on: 3.9.2007

Decided on : September 17 ,2007

State of H P .....Appellant

Versus

Santosh Kumar and another ..... Respondents

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1] *.No.*

For the appellant : **Mr V K Verma, Addl. Advocate General.**

For the Respondents : **Mr. Anup Rattan, Advocate.**

Surinder Singh, J.

The respondents were tried and acquitted for an offence, punishable under Section 498-A of the Indian Penal Code, by the learned trial court by the impugned judgment dated 1.5.1998, which has been assailed by the appellant-State in the present appeal, on the grounds that the learned trial court did not appreciate the evidence of the prosecution in its right perspective and if the statements of PWs 1 and 3 are gone into, it proves the case of the prosecution in its entirety.

The facts in brief are that Naresh Kumari (deceased) was married to Santosh Kumar respondent No.1 on 5.3.1991. She died on 7.10.1992 of burn injuries in the B.B.M.B Hospital, Talwara. Her father Shanti Saroop was informed when Naresh Kumari was admitted in the Hospital. He met her there and after seeing her condition, reported the matter to the police and alleged the maltreatment. The allegations of demand of dowry were imputed in his statement, recorded under section 154 Cr.P.C., which culminated into the FIR. Naresh Kumari is stated to have made a dying declaration Ex.PW10/B in the hospital. Autopsy of her dead body was performed on 8.10.1992. In the opinion of the Doctor, she had died on account of

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

80% burn injuries, which caused septicemia to severe malnourishment, as a sequel to the burns. After completing investigation, the challan was presented by the police under Section 498-A of the Indian Penal Code and the respondents were put on trial.

Charge was put to the respondents to which they pleaded not guilty and claimed trial. After the prosecution evidence, the respondents were examined under section 313 Cr.P.C. The circumstances which were found attendant upon each of them were put but were denied and they maintained their innocence. However, no defence was led.

Upon going through the evidence on record and hearing the learned counsel for the parties, the learned trial court acquitted the respondents i.e. her husband and mother-in-law.

It is argued by Mr. V.K.Verma, learned Additional Advocate General that the learned trial court had given contradictory findings with respect to cruelty and has also brushed aside most reliable evidence of the parents of the deceased, therefore, the judgment of acquittal can be converted into conviction.

Mr Anup Rattan, learned counsel for the respondents, while supporting the impugned judgment of acquittal, has vehemently argued that the deceased in the dying declaration has not implicated any of the respondent, nor the defence charged is proved on record. He has further ventilated that the deceased caught fire accidentally, as stated by her in her dying declaration and after her death the attitude of her parents and other relations became prejudicial towards the respondent. In fact there was no demand of dowry as alleged nor any instance of cruelty has been proved beyond in accordance with law.

I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties and have reappraised the evidence on record.

According to Shanti Saroop, father of the deceased, he came to know about the hospitalization of his daughter on 12.9.1992 itself, he visited the hospital and had seen the condition of his daughter, who was feeling drowsiness. Further according to him, even before the marriage whenever she had visited him, she complained of the demand of dowry and maltreatment by the respondents and other family members. During the trial, he also produced a letter Ex.PW-1/B alleged to have been written by the deceased which was allegedly not taken into possession by the police. He had also filed a criminal complaint under Section 304 B of the Indian Penal Code in the court of S.D.J.M.Nurpur after the FIR in this case. In cross-examination he has stated that he did not make any complaint to the Pradhan or Lumberdar regarding maltreatment or demand of dowry made by the respondents earlier. He denied that his daughter had caught fire accidentally. However, there was nothing to show contra. Similar is the statement of his son Surinder Kumar (PW3). Sat Paul is (PW7) a friend and neighbour of PW3 Surinder Kumar. She had given a different story which was not even revealed by PW1 and PW3 aforesaid, if true, they would have definitely spoken to near and dear in normal course as a natural human conduct., This statement cannot be relied upon at all for the above reason and also because he had deposed that neither his statement was recorded by the police nor was called by the police thus how come he appeared as a witness to spell out which was not even stated and deposed by her father and brother. The only conclusion can be that he is not a true witness.

Further, PW-2 Khairati Lal and Pawan Kumar (PW4) knew both the parties but have not supported the prosecution version. According to him, the respondents were weeping and had taken her for treatment to the best hospital.

PW-5 is Dr.A.K.Sobti, who had attended said Smt.Naresh Kumari, when brought to the hospital, has stated that there was no smell of kerosene oil but

she had 2nd and 3rd degree burns (80%) on her body. He had informed the police and had issued the MLC Ex.PW5/A. She was also given sedatives at the time of admission on 12.9.1992. As already stated she died on 6.10.1992.

PW-6 Dr. J.C. Nagpal had conducted the post mortem of the deceased on 8.10.1992.

Another piece of evidence, on which the prosecution has relied upon, is dying declaration Ex.PW-10/A recorded by the SHO, SI Om Parkash in the presence of Dr. R.K.Gautam (PW10) whereby cause of catching fire accidentally by stove has been mentioned by her for that she has not held any of the respondent liable.

The other story given in her dying declaration that she paid Rs.50/- to her husband but the same were thrown at her and started hurling abuses, thereupon told to pack up the luggage and go to the house of her parents and then her attaché-case was taken by respondent No.2 and told her to bring 2-3 persons from the parental house does not make a case of cruelty punishable under section 498-A of the Indian Penal Code.

The statement of PW-7, as discussed above, has been found quite contrary to the statement of PW-1 father of the deceased and PW3 Surinder Kumar her brother. PWs 1,3 and 7 have made glaring improvements in their statements, it appears that after death of Naresh Kumari attitude of the parents and brother of the deceased had become hostile toward the respondents. Further her dying declaration, so far as maltreatment as alleged is concerned, can also not be made basis for conviction of the respondents for the another reason, that according to the Doctor PW-5 immediately on admission of Naresh Kumari was given sedative, though he had certified her to be conscious while recording her statement but there is no certificate that she was fit to give statement at the time of dying declaration.

Therefore, in view of ratio laid down in ***Paparambaka Rosamma and others versus State of Andhra Pradesh*** AIR 1999 SC 3455, by the Supreme Court makes the dying declaration unacceptable. Therefore, in these circumstances, in my considered opinion the offence charged against the respondents is not made out.

Legally, it is not every harassment or every type of cruelty that would attract S.498A. The prosecution is liable to conclusively establish that the beating and harassment in question was with a view to force her to commit suicide or to fulfill the illegal demand of dowry.

Mere harassment or mere demand for property etc. is not cruelty. It is only where harassment is shown to have been caused for the purpose of coercing a woman to meet demands that it amounts to a cruelty which has been made punishable under the aforesaid section.

Therefore, for the reasons aforesaid, the judgment of acquittal recorded by the learned trial court is up held and the appeal is dismissed.

The respondents are discharged of their bail bonds, entered upon by them during the proceedings of this case.

17th September,2007 (Surinder Singh),J.
(PD/D)